LITTLE BLUE BOOK NO. 1148
Edited by E. Haldeman-Julius

Sexual Crimes and American Law

Clement Wood
(Formerly Chief Police Magistrate, Birmingham, Ala.)

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SEXUAL CRIMES AND AMERICAN LAW

CHAPTER I

THE AVERAGE MAN AS LAWMAKER

Every man or woman is legally assumed to know the law, and is guilty, upon that assumption, for any violation of the law. Ignorance of the law is no defense; and perhaps the impotent lawmakers see no other way to avoid an invariable defense of ignorance. To word it another way, judges in their decisions constantly confess an ignorance of the law; and constantly reiterate that everyone, except themselves, the specialists, is required to know every detail of the law.

How many of the inhabitants of Los Angeles, for instance, know that among the things forbidden by city ordinances of that city are:

1. Shooting rabbits from street cars.
2. Throwing snuff, or giving it to a child under 16.
3. Making pickles in any downtown district.
4. Selling snakes on the streets.
5. Bathing two babies in a single bathtub at one time.

These seem absurd enough; and any city can match them with similar absurdities. Only the fifth of these is upon a subject partly touching the sexual; for, in addition to the hygienic element, the fear of contamination in bathing a girl and boy together is clearly present in the legislators' minds.

When lawmaking is left to individuals, we have decrees and bulls even more ridiculous, than when individual mental eccentricities have been planed down by a board of alderman, or state or federal body of lawmakers. There is this sign posted on a public road in South Georgia, given here as an example of individual legislation:

noTiS

Trespaser's will be persekuted to the full extent of 2 mongral dogs which ain't never been overly soshibil with strangers and I dubble barrel shot gun which ain't loaded with no sofy pillers. Dam if I ain't tired of this hel raisin' on my proputy.

The rules (individual legislation) posted in the bed chambers of the McNeil Hotel, of Miami, Arizona, are as follows:

McNEIL HOTEL RULES
Miami, Arizona

No man, men or male persons are allowed in a room, which is occupied by a lady or ladies or female person or persons.

No lady, ladies or female person or persons are allowed in a room which is occupied by a man.

men or male person or persons, unless they are registered as man and wife.

No man, men or male person or persons, or no lady, ladies, or female person or persons shall occupy a room or a bed with another person, without first consulting the management of the hotel and registering on the date of beginning of occupancy of the room.

I will call your attention to Chapter 62, House Bill No. 4, against lewdness, assignation, prostitution or nuisance which was voted on the fifteenth day of November, 1918, and the same became a State law.

J. P. McNeil, Proprietor.

This is an attempt to translate a state law into something intelligible for the average man's understanding. Perhaps you think that its glorious and enjoyable dumbness can not be equalled by a legislative body: in which case we refer you to this statute of the town of Norphlet, Arkansas:

ORDINANCE NO. 20

Section 1.—Hereafter, it shall be unlawful for any man and woman, male or female, to be guilty of committing the act of sexual intercourse between themselves at any place within the corporate limits of said town. . . .

Could anything better the coy qualifying "man and woman, male or female?"

Section 3.—Section One of this ordinance shall not apply to married persons, as between themselves, and their husband and wife, unless of a grossly improper and lascivious nature.

This calls us to reflection: and we picture a committee of the City Fathers attending upon

every "act of sexual intercourse" committed by "married persons, as between themselves, and their husband and wife," studying every action of the married persons, and gravely reporting back to the Board of Aldermen any action that failed to satisfy their ideal of the ungrossly proper and non-lascivious. So works the American law-making mind.

Laymen are at times as wholly intelligent, as in this pronunciamento of Hon. Charles Mann, an eminent Kansas editor:

> I am in favor of a law compelling women found guilty of murdering their husbands to make public apology.

We would not like to be a husband in Kansas. The state of public opinion nourished by such attitudes toward crime and the law is fostered by the thing that goes for religion in America, as this note from the Owensboro, Kentucky, *Messenger* attests:

> "Solomon, a Six Cylinder Sport." Could you handle as many wives and concubines as this "Old Bird"? Rev. B. G. Hodge will preach on this subject Sunday night at Settle Memorial. You are welcome.

Do not think that any of these items are faked: they are in every case attested quotations from the published laws and comments of the American mind. The Rev. J. B. Culpepper, a Methodist preacher of Haynesville,

Louisiana, issued this public platform concerning his proposed law:

> Every man ought to marry at the age of 21. I would put 22 as the limit of singleness for a man. At 23 he ought to be fined $1,000 for being a bachelor. The fine should be raised accordingly every year he remains single. At the age of 30 he ought to be sent to the penitentiary for life for the crime of remaining unmarried.

Do not let this persuade you that every preacher is feeble-minded; or that every Christian preacher deliberately denies the statement attributed to Christ in Luke, "that those that shall be accounted worthy to obtain that world (heaven) neither marry nor are given in marriage" (on earth). But it is a typical example of the infinite muddle-mindedness of America upon sexual relationships.

We have certain laws; certain arrests; and, at times, certain confessions. The "confessions" are frequently lies wrested illegally from the suspects by police brutality, as this note from the St. Louis, Missouri, *Times* indicates:

> William Lashley, a Negro, was reported by the police yesterday to have admitted shooting to death Lieut. Sidney E. Sears of the police force. It now appears that Lashley made this "confession" after he had been knocked unconscious with a gun butt, had his jaw broken, three ribs fractured, and had been kicked in the face and stomach and otherwise manhandled. After all these things were done to him, he says, he was asked about the shooting.

This vicious practice of police brutality may ultimately earn a red flood of retaliation. It should interest us, in knowing what to expect of criminal laws in practice. Public opinion is whipped up into a state that permits such outrages, by asinine ministerial utterances like the following, uttered by Rev. C. A. Owens in his sermon at the First Baptist Church of Winston-Salem, N. C., as reported by the *Journal* of that town:

> With the present movement northward of Negroes, and in the absence of a race prejudice that has protected the Southerners, there is the greatest possible danger of the mingling of the races, so that in the future it may come to pass that you will send your daughter to the North for culture and she will come back with a little Negro.

There could not be a more lying picture of social forces today, than this statement that the northward movement of Negroes will mean that a Southern white girl, coming North to study, will return with a Negro of her own. Is it any wonder, that, with their preachers uttering such infantile lies, the Southern whites continue to regard Negroes as a source of sexual danger—seeing the mote, and overlooking the beam?

There may be a bigger source of puerile thinking than the American business man and the American advertising man: but we have so

far failed to encounter it. For example, there is this address before the Advertising Club of Portland, Oregon, by George S. Fowler, advertising director of Colgate & Company:

> I challenge you to find a boy with a clean mouth and a dirty heart. The boy who washes his teeth twice a day doesn't go wrong. He can't.

This is, of course, an outright lie, made for business purposes. A boy can be required, by law, or by his parents, to wash his teeth twice, or a dozen times, a day: and may still become foul-minded, dirty-hearted, and one who "goes wrong," in the world's and Mr. Fowler's meaning. We had just as well abandon the depressing vision of the American man at his work of law-making and solving criminal problems, especially those relating to sex; and see what is the present status of criminal laws upon this theme.

CHAPTER II

CRIMES AGAINST CHILDREN

It is impossible, in a brief study, to treat all of the offences touching sexuality in detail. For the laws differ, in greater or less degree, among the several states; and the enforcement of the law in the several states differs even more amazingly. Some of the laws are intelligent and well-considered; many of them are absurd and as unenforcible as the ordinance from Norphlet, Arkansas, already quoted. The method adopted will be to follow exhaustively the criminal statutes of New York State, calling attention to the chief divergences among other states; to observe attempts to enforce the statutes; and to consider the wisdom or lack of wisdom embodied in the laws and the application of them.

Let us first consider laws affecting adults and children. *Abortion* is generally defined as a crime, the crime of attempting to produce a miscarriage in a woman, by drug or instrument; unless the miscarriage be necessary to preserve the life of the woman. From the

standpoint of a more intelligent morality, it is a crime for a woman to bring children into the world which neither she nor her husband can support, feed, clothe, and educate. This is held legally to be a virtue; preventing the child's birth, at any stage, is held a crime. Among the absurdities of the law is the decision, made and repeated, that the woman need not be pregnant; if it is thought that she is pregnant, and a drug be administered to produce a miscarriage, or an instrument used for this purpose, the crime of abortion has been committed. The woman who submits to an attempt at abortion is likewise guilty.

The wilful killing of a "quick child," or one which has begun to stir in the womb, is manslaughter in the first degree.

The legal age of consent, or age at which woman may legally give her agreement, was ten years at Common Law; it varies, throughout the states, from this age to twenty-one, for Wisconsin. In New York State, it is eighteen years. Intercourse, in New York State, with a woman under eighteen, constitutes rape, whether accomplished by force or not. It makes no difference if the woman is the aggressive party, seducing the man; or if she is a professional prostitute: the law holds that the intercourse

constitutes rape. It is obvious that such a blanket provision runs counter to common sense.

There is a class of criminal men, usually described in the press as "fiends" or "degenerates," who prefer intercourse with children to that with adults. This is one manifestation of the inferiority complex: the man who feels that he is very inferior to women assumes in advance that no adult woman of his own race and social class will accept his advances, and accordingly turns to such lesser expedients as bestiality, homosexuality, a woman of a race regarded as lower, or children.

A typical case was the killing of six-year-old Lillian Gilmore, in Philadelphia. Wylie F. Morgan, the man who confessed to the murder, had apparently beaten the girl with his fist in the face until she died. His knuckles, when he was arrested, were skinned from contact with the girl's face. The little girl's jaw had been broken in five places. After then completing the assault, in a lot on Torresdale avenue near Bridge street, Philadelphia, the ravisher had motored with the murdered girl and little four-year-old sister Dorothy out into the country, and had thrown the dead girl's body into the ice of Neshaminy Creek at Croy-

don, Bucks County, eighteen miles away. He made no attempt to touch the younger girl.

A notorious case was the arrest of Francis Kluxen, fourteen years old, charged with the murder of Janette Lawrence, a girl of twelve from Madison, New Jersey. An earlier case was the case of Jesse Pomeroy, who was sentenced to the reformatory at thirteen, in the Boston district, for stripping little children nude and mistreating their bodies. When he was released from reform school, he killed two children in a frightful manner. The body of a four-year-old boy was found on the clam flats of South Boston, naked and mutilated; that of a little girl, Kitty Curran, was found in ashes in the cellar of Pomeroy's house. This was in 1876; and Pomeroy later served more than forty-five years in jail for his offenses.

A case from Michigan was that of an ex-convict, Raymond Eugene Wilson, who confessed kidnapping and mistreating Rosalie Shanty, the eleven-year-old girl diver. For this peculiarly heinous offense Wilson was sentenced to thirty-five years in jail. Ten years before this assault, Wilson had been arrested for mistreating a little girl, and had been put on probation. Later he went to prison for eighteen months for a second similar offense; and two

weeks before the assault on the diving girl, he had married a sixteen-year-old Grand Rapids girl before her parents could interfere. This marriage was annulled. Wilson stated that he had seen the girl diving the previous summer, and had failed to scrape her acquaintance. His senses unnaturally kindled by moonshine alcohol, he drove to her mother's house, and asked to have the little diving girl take dinner with his own little girl. The mother consented, said Rosalie was in church, and directed Wilson to the church.

The man told the girl what her mother had said, and drove her into the woods. Then he mistreated her, and last saw her as she ran away through the woods, screaming and crying, her clothes almost torn off of her. The girl, her mind temporarily deranged, spent two days and nights in the north Michigan woods; and her mind may be permanently affected by the attack.

Attacks of Negro men on white women, and of white men on Negro women, might be treated as a separate section of this study; but they fit into the other divisions. There was a recent case in South Orange, N. J., in which a Negro burglar made the twelve-year-old daughter of the house show him around while he ransacked

it of all its valuables; and then assaulted the girl. The psychology of rape has been developed in detail by Lester Ward; and Ward establishes that there is a definite compulsion upon the males of an inferior race to mate with women of a superior race. Perhaps the only cure for this situation is the development, in the race regarded as inferior, of an understanding that its members are not racially inferior. The South's answer, of brutally lynching the first Negro encountered who corresponds vaguely to the blurred description of the assailant, has not minimized the offense, rare though it be.

To counteract such cases there are the assaults by white men upon Negro women, which are rarely punished by Southern courts. Northern courts are stricter; there was the recent case of a white man named William Creech, who was held over to the Grand Jury for an alleged assault upon a thirteen-year-old Negro girl named Josephine Williams. White men who attack, or who live with, Negro women, at times belong to the class of men afflicted with the inferiority complex, already mentioned.

An exceptionally heinous case, uniting incest with attacks on children, came from Meductic,

New Brunswick, recently. One Henry D. Williams, aged thirty-five, a stolid, unkempt backwoodsman, had been in the habit of enticing his nieces, Cynthia Foster, fourteen, and her sister Nesia, ten, to stop by his house on their way home from school. The girls' bodies were found in the man's house, that of the younger girl tucked out of sight under Williams' cot, that of the older, cruelly mistreated, found on top of the cot. When accused of the crime, Williams is said to have replied, "Oh, it's not much."

Another strange incest came from Bridgeton, New Jersey, where Thompson Dickson was indicted for the murder of his own fifteen-year-old daughter Emma. The defendant's father, Benjamin Dickson, past eighty, was the chief witness for the state; and he testified that he had heard in the dusk, outside of his window, "a funny sound, a gurgle, and a gasp," and looking out had seen Thompson Dickson standing over the body of Emma. He discovered a little later the girl's blood-stained body lying in a wheel-barrow. There was also evidence that, three years before, Dickson had told a friend that he was going to do away with his daughter and his old father, and "go live in the woods." The father was acquitted, chiefly

upon the defendant's claim that the old man was subject to religious delusions.

In one recent case, the accused was Wilson Johnson, former superintendent of the Long Island Baptist Orphanage, No. 2360 Ocean Avenue, Brooklyn. He was charged with criminally assaulting a girl at the institution; for, since the girl was under eighteen, she could not consent. Johnson was said to have admitted having relations with at least six of the girls; and his method of seduction came out, consisting of presents, half dollars, trinkets, and silk stockings to the girls, and of going into their rooms while they were undressing. Detectives reported that, when Johnson kissed his wife goodbye, he said, "Well, I guess you'd better take the train back to Georgia—it looks like twenty years for me."

Many of these cases were committed by men eccentric to the point of insanity; and the case of young Harrison W. Noel, who kidnapped and murdered six-year-old Mary Daly, shot to death a Negro taxicab driver, and wounded another driver, rotated around a young man who had on one occasion attacked his father, while the latter was sleeping, with a hatchet; and who had been confined in sanitariums for the care of the mentally afflicted. Nothing abnormal

showed in the boy, the accounts of the crime said, until after he went to Harvard. There was some similarity between this crime and the thrill-murder by Loeb and Leopold, in Chicago.

A subtler method of seducing girls, especially in the direction of making them prostitutes or women of loose morality, appears in the activity of the "drug ring." The drug vendors pick up likely girls of the debutante or flapper age at public dances or other places, take them to some hotel or apartment house room, and let them smoke drugged cigarettes "for the fun of it." The girls, once drugged, are at the mercy of the men, who first assault the girls, and thereafter sell them the drug at high prices. The main purpose here is to create a market for the drugs; the incidental result is the demoralization of the girls.

Cases of mere mistreatment of children, as in institutions, consisting of shackling and excessive beatings, are at times due to sadism on the part of their elders; but do not always easily fit into the general conception of sexual crimes. Excessive whippings by parents or those in control, especially by teachers in boarding schools, are akin to the whippings in the Marquis de Sade's celebrated "Opus Sadicus," and should be treated as sexual offences.

Cases of incest less frequently come into the public prints; although brother and sister marriages have recently occurred in the marriages of John H. Cregir, seventeen, of Binghamton, New York, and his sister Elizabeth M. Hafner, an adopted child, who lived in the Bronx; and in the marriage of Louis Rollins and Elizabeth Rollins of Portsmouth, N. H., said to be brother and sister.

Kraft-Ebing says that immoral acts with children under fourteen increased tremendously in Europe in the last few generations; and attributes this to "an advance in the physical decadence (impotence) and psychical degeneration of the adult population." Many of these cases are brother against their little sisters; others are lewd servant girls, governesses, nursemaids and female relatives. Bloch lays the cause elsewhere, as to such superstitions as that intercourse with an intact child cured venereal disease and prolonged life. The better thinking supports Bloch for the older cause, and Kraft-Ebing for the explanation of the survival. Cases are cited of mothers and aunts who have seduced their owns sons and nephews.

In spite of the legal age of consent, it is clear that some distinction should be made between such acts as (1) assault on a minor, (2) peace-

ful seduction of a minor, (3) an adult's intercourse with a minor who offers herself or himself, and (4) intercourse between minors, voluntary on both sides. Such a study as my "Modern Sexual Morality," in this same series, indicts our whole system of sexual non-education; and its principles might with profit be studied by legislators and sexual workers. Assault on a minor is clearly wrong, being a more aggravated case of assault, which is in itself wrong, as a forcible exploitation of another against the latter's will. Seduction of a minor is wrong; although a proper sexual education of a minor, with legislative sanction, would be highly moral. Sexual acts among children are wrong, but are wide-spread. Legislation cannot expunge sex from the minor; an intelligent legislation will supply adequate education, recommending abstinence until maturity is reached. Intercourse after solicitation by a minor is in another category—in any case a far lesser crime than assault on a minor. Intercourse with a prostitute under eighteen, in New York State, held to be rape, is clearly not rape, according to the dictates of right thinking.

On the one hand, minors should be protected from attack, or mistreatment of any kind. On the other hand, marriage postponed until eight-

een (in New York) or twenty-one (in Wisconsin), where the parents withhold consent, trusts entirely too much to the accident of parenthood, and ignores too far the desires of the minors most concerned. Since many parents judge marriages purely from a commercial standpoint, some more impartial tribunal might well act in such cases. After all, the objects is the continuing happiness of the individuals most concerned, who are not the parents, but the two in love with each other.

CHAPTER III

LOVE AMONG ADULTS: PEACEFUL

Among the absurd laws in the American system is the Mann White Slave Act. This bill was passed, according to the representations of its sponsors, and the debates concerning its passage, for the purpose of stopping the interstate traffic in women. It has been "interpreted," by the federal courts and the United States Supreme Court, to mean something vastly different: to jail for a felony any man who pays a woman's transportation to another state, where he intends to have illicit union with her. That is, a man and woman, both unmarried, can ride on the Albany Night line from New York City to Albany, can have intercourse on the boat and at Albany, and are subject to no law: assuming that both are of age, and the act is voluntary on both sides. The same man, paying the girl's expenses on the Fall River Line to Fall River Line, Massachusetts; or paying her expenses on a ferry to New Jersey for the purpose of illicit intercourse between the girl and himself, renders himself liable to jail for a felony.

In many cases, this law has worked outrages. A friend of mine, who traveled for a large lawbook publishing house, was in a midwestern

city at a hotel one night, and casually mentioned to the hotel manicure girl that he was going that night to another city a few miles off, in another state. "Take me with you," the girl asked. "Sure," he said. He paid her way, left her to go to a hotel by herself, and went to a hotel by himself. The next day the girl's parents located her, and secured a confession from her that the man had brought her there for purposes of illicit intercourse—a lying confession on her part. The young man was sent to the federal penitentiary for a year, for this imaginary offense. So goes the Mann White Slave Act, in practice.

Illicit intercourse, where the parties are of age (legally known as fornication, to distinguish it from adultery, where one party must be married), is a crime in only a few states of the Union; it is a federal crime, where the parties go from one state to another for this purpose. This is not a crime in New York State.

Various results follow voluntary fornication and adultery throughout the country. Adultery did not become a criminal offense in New York State until 1907; and it is now practically impossible to secure a conviction on this offense, unless the circumstances are of unusually ag-

gravating nature. Since adultery is the only ground allowed in New York State for divorce, every divorce action must present evidence of adultery; and a criminal action based on the adultery is almost unheard of. To satisfy the law, one party must be guilty of adultery, or a case must be presented where adultery has been staged. In some states adultery is a felony, in others a mere misdemeanor; in some states only the married person is guilty of a crime, in others adultery is committed only where a married woman has illicit intercourse, intercourse between a married man and an unmarried woman not being defined as adultery. These differentiations are somewhat ridiculous in states whose culture is as similar as the states of the United States. Ultimately some order will be restored by federal laws regulating crime, to supplant the variegated state laws. It is to be hoped that some measure of intelligence will permeate the federal legislators; although, when the prohibition and similar laws are remembered, this hope may be illusory.

In Maryland recently, a woman conceived what was said to be an "insane jealousy" of a girl named Dorothy Grandon, accusing her of intimacy with the woman's husband, Lloyd Shank. The wife, Mrs. Mary Shank, raised a

mob of fifty men, kidnapped the girl, had them hold her while she clubbed the girl brutally in the face, stripped off the girl's clothes and applied hot tar and feathers. The girl states that she had never seen Mr. Shank until an hour before the attack by Mrs. Shank and the mob. Members of the mob and the clubbing wife were arrested for the unusual crime.

At times the man who loves indiscriminately is killed by some woman or man who regards herself or himself as harmed by the loving. The killing of the novelist David Graham Phillips was of this type, as was the unexplained murder of the bridge whist authority, Joseph Bowne Elwell. Elwell, according to the testimony of his former housekeeper and others, had had many affairs with women, both with mature married women and with unmarried girls. His killing is still entirely unexplained.

In Erie, Pa., last year, a local boxing commissioner was shot by a husband who found the boxing authority in an apartment, where he was staying with the slayer's wife. A bloodier case occurred in Fresno, Calif., where a man named George T. Harley returned to his house and found a youth, H. C. Blanchard, with Harley's wife. Harley located his shotgun, and it was discharged accidentally, hitting no one.

The youth fled, and Harley asked his wife: "How long has this been going on?" She answered, "Long enough. How do you like it?" Harley thereupon clubbed his wife with the gun barrel until he killed her. The husband was exonerated by the coroner's jury for the killing, they holding that it was justifiable by what is called the "unwritten law." The unwritten law is often used as a cloak to protect the sadism of men and women, especially when these are wounded in their pride or their sense of property in a wedded mate.

In one case, a husband was exonerated because the wife's lover said, "All women are bad, and your wife is a bum." There are more cases in which the wife shoots the husband, either for his adultery or for his attempts to make a prostitute of her. The unwritten law, invoked in behalf of a woman, in this latter case is an almost certain defense. A particularly vicious case from the Bronx, New York City, was of a man who tried to make his wife get dresses from other men, saying "There's plenty of suckers; go out and get it"; and whose beatings twice prevented her child-birth.

A case from Jersey City might have been included under the section on offenses with children. The wife, Mrs. Grace Kinney, in a

divorce action, was only nineteen; and the evidence showed, according to the vice chancellor's finding, that the wife had committed adultery with boys aged 16 and 14, and had, in fact, seduced them to commit the adultery. In spite of evidence that the husband had himself committed adultery with a sixteen-year-old girl, divorce was granted to him. The application of the divorce law in certain states is that, if both parties have committed adultery, there can be no divorce: common sense turned topsy-turvy.

Many marital mix-ups veer close to the criminal. There was the extraordinary case from Syracuse, where one Frank R. Woodruff swapped his wife to his friend Grover Coant, all three signing this document: "I have assigned my wife to Grover Coant for his Ford touring car, and all the consideration including one tire, one pump, and all the tools in the car at the present time." Two neighbors signed this amazing document as witnesses, and it was taken to the Oswego County Clerk's office for filing. When the officials came to investigate the transaction, they found the Ford had been taken up by a relative of Coant's on a $40 mortgage. To the parties concerned, this transaction seemed the essence of common sense:

and, considering some of the laws and judicial decisions we have just noted, it may be that common sense was in them after all.

An Orange, N. J., judge discovered his wife, Mrs. Mazie Bianchi, in the room of Daniel J. Hughes, captain of bellhops at the New Tremont Hotel. The judge thrashed the bellboy soundly, but refused to make formal complaint. A few months thereafter the two were taken in a vice squad raid in a hotel, and this time the law was allowed to take its course. A crime strangely growing out of a love demand was the case of Mrs. Georgia Thomas, of Tulsa, Okla., whose husband, a jealous man, told his wife he would only love her if she became an invalid or a cripple for life. The wife shot herself in the leg, in order to satisfy this strange demand: and after two years additional failure of the marriage, sued for divorce, charging extreme cruelty.

Miscegenation, or marriage of members of differing races, is a sexual crime in many states, especially in the South, and is not a crime in the North. When I served as chief magistrate of Birmingham, Ala., three cases came before me, of white women arrested with Negro men—one in a Negro house, two in one of the most prominent hotels in the city, the men being

bellboys summoned for the purpose by white women. Southern logic held this a crime. No case of white man and Negro woman came before me; but these are known throughout the South, and in rare cases mob violence results, especially in cases of a sadistic local reform wave or Ku Klux Klan wave.

Adultery in certain states is a crime, as well as a reason for divorce: and bigamy, or a second marriage, is universally held as a crime. Bloch points out the testimony of a clergyman on the respective parts played by women and men in illicit unions: "Young women are in no way behind young men in the strength of their fleshly lusts; they are only too willing to be seduced—so willing that even older girls frequently give themselves to half-grown boys, and girls give themselves to several men in brief succession. Moreover, it is by no means always the young men by whom the seduction is effected. Often enough it is the girls who lure the lads." This condition may be more extreme in those parts of Europe where there is a larger number of women than of men, and where a girl's chance of being selected as a mate is less. But the tendency today, toward masculinity in women and effeminancy in men, points in the same direction in America.

CHAPTER IV

LOVE AMONG ADULTS: VIOLENT

The love incident secured by violence is universally regarded as a sexual crime, and many laws provide punishment for variations of it. Abduction, defined as "the taking of a female for the purpose of prostitution, marriage, concubinage, or sexual intercourse," is the first of these. The law goes into great detail on this, including inveigling or enticing "an unmarried female, of previous chaste character, into a house of ill-fame or assignation, or elsewhere, for the purpose of prostitution or sexual intercourse." A parent, guardian, or other person in legal charge of a female under eighteen is guilty of abduction, if he "consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse"—a stringent section of the law, rarely enforced. Force, fraud, or deception is not needed to constitute abduction: request, advice or persuasion is sufficient. As before, the defendant is guilty, if the girl is under eighteen, whether he knows that fact or not. The woman's unsupported evidence is not sufficient to cause conviction; but very slight corroboration will satisfy the law.

An assault is a display of force or an attempt to offer to do bodily hurt or injury to another. It is not necessary that it be accompanied by what the law calls a battery, namely, a touching of the person or some other form of physical violence. Mere words do not amount to an assault, even though injuries result from fright resulting therefrom.

Rape is the highest sexual crime of violence. Its definition is wordy; it means primarily perpetrating an act of sexual intercourse with a female not the man's wife, against her will or without her consent. It is also rape when the woman is incapable of giving consent through idiocy, imbecility, or any unsoundness of mind, temporary or permanent; or when her bodily or physical weakness, or immaturity, makes her not offer resistance; or when fear of immediate and great bodily harm prevents her offering resistance; or when stupor, or weakness of mind induced by an intoxicating, or narcotic, or anesthetic agent prevents her resistance. It is rape when the intercourse is committed while the woman is in the custody of the law, or of any officer thereof. Intercourse with a female under eighteen is rape, whether she consents or not.

The New York statutes hold that a man can-

not be held guilty of rape on his own wife; although he may be an accomplice in assisting another to commit the act.

Any penetration, however slight, is sufficient to complete the crime; the act need not have been fully completed. Impotency on the part of the man, clearly proven, is a defense. The woman's evidence must have some corroboration, which may be entirely circumstantial. But attempt to commit a rape does not need to be corroborated—a strange discrepancy.

In Alabama and other states, rape is punishable by the death penalty. Other states regard the crime more lightly. In New York recently a policeman, aged thirty-three, who assaulted and raped a schoolgirl of fifteen, was held guilty by the judge, since "he betrayed his trust and oath as a policeman, and must be made an example of for other members of the force"; yet the sentence was not less than two and not more than four years in Sing Sing. There is also civil suit for damages in such cases; and a New York physician was recently required by the jury to pay $15,000 damages to a girl he had assaulted.

Death to the girl is a constant concomitant of such crimes of sexual violence. There is an increasing number of cases where a girl accepts

an invitation to an automobile ride, is taken out to a lonely spot, and is there assaulted and murdered by the man. A Methodist sexton of Passaic, John Hervish, had nine daughters, and was very strict with them. One of them left home because of this strictness. Returning home at 9 o'clock from a movie house, along a street fairly well lighted, she was attacked, her jaw broken, and was strangled to death, after being assaulted. There were no clues to the perpetrator of the crime. This was on a Thanksgiving night; and it is well to remember that crimes, including sexual crimes, show a definite seasonal increase and decrease. That is, at the beginning of a year statisticians of penology can forecast the number of attacks on children, of rapes, and the like, that will take place throughout the year; and their number month by month. The exact locations of the crimes, and the parties to them, the criminologists can not forecast; but their grim statistics invariably work out. The urge grows strongest in spring, the rutting season; in the lush hot summer days; and has a last flare in the harvest season. Of course, if there were enough liberality of conduct sanctioned by American law and custom, there would be much less sexual criminality. A few essential

sadists would still commit assaults; but the improvement would be impressive.

Recently, near Larchmont, New York, the fourth young girl who had been invited to take an auto ride, and had been assaulted in the car and thrown dead from the speeding car, was discovered by passers-by. If girls accept such invitations from unknown men, such conditions will continue. In all these cases, the assailants were never discovered. The temporary gratification of the desires of the men were costly to the girls: for the girls paid with their lives for a very limited pleasure on the part of the men.

There have been similar discoveries in practically every State in the union, within the last few months. Occasionally these take place in winter; and exposure of the woman in the snow, where she has been stunned and not killed, often leads to her death soon afterwards. More rarely such attacks occur as a result of general drunkenness or drinking, as was alleged to be the case in the prosecution of Roscoe ("Fatty") Arbuckle for the death of the motion picture actress Virginia Rappe. The evidence showed that Arbuckle had made previous attempts to get the keys to Miss Rappe's room; that he got her in his room,

locked the door, and would not let in outsiders who heard the girl's screams for assistance. When others were finally permitted to enter, the girl's clothing was torn off, and she was apparently in a dying condition. In spite of the strong evidence, Arbuckle was exonerated.

Another type of case is where a bandit, white or Negro, holds up a couple returning from some place, drives off the escort, and ravishes the girl. Atlantic City, N. J., Waco, Texas, and many other places have witnessed such assaults recently. During the war, stories of attacks on visiting girls by soldiers in the various camps were frequent. Mrs. Grace Humiston told of such attacks at Camp Upton, saying: "I have been informed of the death of two girls down there, by people who saw them assaulted. One of these little girls was found in the bushes near the camp, the other some distance away." Asked to produce evidence of this before the federal authorities, it is said that the complainant did not produce the evidence. To an outsider the question naturally arises, why did not the people who saw the girls assaulted by the soldiers step in, then and there, and prevent the consummation of the assaults? The people in question must have either been very cowardly, or must have

been vicariously sadistic enough to enjoy the murder of the girls in question. The whole story lacks plausibility, as told; and yet such attacks may well have taken place, in many of the camps.

In New York City, two of the prominent girls in the fast night life, Dot King and Louise Lawton, were surprised in their apartments, gagged, and killed, for the sake of the jewels which they wore. The girls had been first attacked sexually, and then strangled to death; which shows that both sexual desire and desire for robbery played their part in the killings. Attacks by Negro men on white women are not frequent, and are counterbalanced by attacks on Negro women by white men, which rarely get into the papers, unless in times of race riot, as in the Florida race riot in which some half dozen Negro women and girls, met on the roads within a radius of a dozen miles of the site of the race riot, were assaulted and killed by white mobsters.

A modern development of such crimes, especially in the vicinity of large cities, is the attacks by gangs of men upon a woman or two women. One of the worst cases was the kidnapping of a young wife, seventeen, a New York City public school teacher, by two men,

near Coney Island. The men took her to a house in Coney Island, where a score of men tore her clothing from her, and then attacked her. The next morning a policeman heard the woman's screams; entered the house, and found there more than a dozen men. All but two of the men escaped by jumping through the windows; the policeman arrested these two, and gave aid to the woman, nude and fainting. Three others of the men were arrested and identified by the woman. Your especial attention is called to the action of the law in this clear case. The evidence stood, five men on one side, claiming that the young woman had voluntarily surrendered herself to the group of men; on the other side, the young woman's testimony, testimony of her previous good character, and the testimony of the arresting officer. The judge freed the five men, and found the young wife guilty of vagrancy. Such a case is beyond comment; it is no wonder that, with such decisions, gangs that prey on women can flourish.

In other cases, women are kidnapped and taken on board a tugboat or other boat, and are there abused by gangs of men, until they tire of her; in which case it is easy to strangle the girl, and throw her body overboard, with

small chance of subsequent detection. On a road outside Hackensack, N. J., seven men attacked a girl and her escort, knocking the escort senseless, and then assaulting the girl. The girl and her escort were riding, when a man stopped the car and asked for a match. As he was getting it, the gang rushed out, struck the escort over the head, knocked him unconscious, dragged her into the bushes, and there assaulted her. During the year some dozens of similar stories appear in the metropolitan papers; they have become so common that there is no longer great public interest in such occurrences.

A strange story came to the papers from the Kentucky mountains, where a Cincinnati husband claimed that a moonshine Bluebeard had kidnapped women, mistreated them, and then forced them to poison themselves. A story nearer home was the alleged attack by D. C. Stevenson, formerly known as the "Old Man" of the Ku Klux Klan in Indiana, of which he was at one time Grand Dragon, upon a girl named Madge Oberholzer of Indianapolis. Stevenson, a prominent Republican politician of Indiana, as well as leader in the Klan's movement to protect pure womanhood, summoned the girl by telephone to come to his house on some pretext. While there, the published evi-

dence states, she was forced to drink liquor. She was later placed in a train for Hammond, and forced to occupy a stateroom with two men. During the ride, she was attacked in the train. The girl was widely known in public school circles in Indiana; had served as Secretary-Treasurer of the Young People's Reading Circle of Indiana, and had been employed in the office of the State Superintendent of Instruction.

Stevenson's two alleged accomplices, Earl Klenck, a deputy sheriff, and Earl Gentry, formerly of Evansville, were accused with the chief assailant. It was also claimed that the girl had been attacked in a hotel room in Hammond, after the train ride was concluded. The girl asked one of the members of the party for money to buy a hat; and instead purchased and took bichloride of mercury, from which she died two weeks later. The men were all indicted for the assault and the murder, in that they failed to provide any medical attention for the girl, while she was writhing in the throes of the poison which she took. Cases of violent sexual crimes by men of prominence differ from cases involving less prominent men, in that the girls involved may at times be persons of prominence as well.

If the family of the girl had taken the matter into their own hands, and had killed Stevenson, it is probable that a defense setting up the so-called "unwritten law" would have freed them. In a case in the Bronx, a judge congratulated a jury upon freeing a father who had murdered his janitor with an ax, because the janitor had enticed the man's daughter, seven years old, into the basement, and had there assaulted her.

Murder, as a result of love entanglements, is not infrequent. In Chicago, a man, tired of his wife, drowned her, head downward in a barrel of bootleg whiskey in his cellar; in Connecticut two deaf-mutes beat the wife, a deaf mute, to death with a lead pipe; in Los Angeles, a dentist, tired of his wife's jealousy of the man's attentions to other women, gave her whiskey to make her drowsy, and then killed her with a cone and somnoform, a heavy dental gas. Throwing her body into a well, the dentist had the woman's son, unknowingly, entomb his own mother with cement, as a "good joke" on the young man.

In many cases a young woman, seduced and made pregnant by a man, is killed by the man, to put an end to the woman's importunities that the man must marry her. Such a

case happened in upper New York State a few years ago; and upon this case, as reported in the newspapers, Theodore Dreiser based his powerful two-volume novel, "An American Tragedy." In this story, the young man, after several fugitive affairs with girls in the middle west, came to New York State, a poor relative of the richest family in the place, and commenced an affair with a nice factory girl, which resulted in her pregnancy. Meanwhile, he had been taken up socially by the richest society there, and had fallen in love with a rich girl, who loved him as much. The girl whom he had seduced insisted upon marriage; and, as the only way out of the dilemma, the young man took the girl to a lonely lake, and there killed her. In the novel, the man is convicted and executed in the death-house at Sing Sing. The story is powerful and well told; and such novels, with their overtone of the resistlessness of the oncoming of the penalty, undoubtedly play a strong deterring part upon the minds of undetermined young men confronted with a similar dilemma.

Where the woman has, or is about to have, an illegitimate child, the sexual violence often takes the form of murder of the child or children by the mother. The case of Leah Silver, in New Haven, involved a mother's abandon-

ment in a swamp of her young illegitimate child. At times neither parent is located, as in the Albany case, when the baby, aged two days, was strangled and its body sent to a fictitious address through the mails. A Bowdoin college student's wife smothered her year-old child to death in a hotel room; she and her husband were arrested on charges of manslaughter for the offense. A nurse at Camden, N. J., who had a child by an elderly man, killed the baby, and shipped the body to the father. No charge was brought against the father.

A twenty-three-year-old girl at Irvington, New York, was arrested for killing her two-weeks-old child, by crushing the baby's head to a pulp. Her defense was that she had seen snakes on the baby's bed, and had struck at them. She had been confined in the Overbrook Insane Asylum for three years until very recently, when she was released and sent to a hospital to have a child born. Evidently the pregnancy came while she was confined in the insane asylum; which points out something about the administration of our insane hospitals.

Strangest of all the sexual crimes of violence, perhaps, are those based upon religious mania, in turn based upon some sexual twist. There

was the amazing case from Tampa, Florida, where an eighteen-year-old girl, Eva Winchester, and her mother, "stamped to death" the father, J. C. Winchester, sixty-five, as a religious offering. The three of them, she said, had visited a religious sect gathering in St. Petersburg the previous Sunday, and her father, a paralytic, was so much benefited that she and her mother decided to make an offering of him to the Lord, for the benefaction. The sexual roots of this crime are for the psychologists to unravel, and would require too much digging for such a study as this.

Another Florida case was that of Frank McDowell, of Clearwater, a boy prodigy of a few years ago, who graduated from George Washington University at the age of sixteen. At the age of ten, the boy said, while putting on a shirt, he found some buttons missing, and cursed. Later at a church service he heard a clergyman call this "the unpardonable crime." This could only be atoned for, he said, by human sacrifices, three killings, a year apart, by fire, by blood, and by water. A year before the arrest he sprinkled the bedclothes of his two sisters with gasoline, and burned them to death. A year later he crept into the room where his parents lay sleeping, and shot them

to death. For this he was arrested, while planning the third murder, that of a Georgia girl playmate, whom he intended to drown. The boy held that the day of the superman was at hand, and that he would be the first superman, and cited the name of Professor Dewey, of Columbia, as reinforcing his opinion. This mystic sadism, rooted in eroticism, was punished not as a sexual crime; but its origin was perverted sexuality. Men and boys slain for sexual thrill, as in the Loeb-Leopold and similar cases, are also akin to this.

Sexual crimes of violence violate the rights of the individuals attacked, and hence should be punished by the state. But the crime should be actual and not hypothetical; and the laws should be uniform, a result most easily to be achieved by federal criminal laws covering the subject.

CHAPTER V

COMMERCIALIZED LUST: PROSTITUTION

Legal restrictions upon prostitution are often lumped together under the name of "disorderly conduct." The New York State law includes, among disorderly persons, "2. Every common prostitute or night walker loitering or being in any thoroughfare or public place for the purpose of prostitution, or solicitation, to the annoyance of the inhabitants or passers-by." The law forbids the use of any tenement house or part thereof for purposes or prostitution or assignation. Actual intercourse is not necessary; the crime consists in offering the body for this purpose.

The federal law prohibits the admission of prostitutes or persons coming to the United States for purposes of prostitution. A previous statute defined prostitution as referring to women who for hire or without hire offer their bodies. Importing a women into the United States, with purpose of living with her as one's mistress constitutes a violation of this act.

The terms "reputed house of prostitution or assignation," "houses of prostitution," "house of ill-fame or assignation," "disorderly house," include, by New York law, all premises which

by common fame or report are used for purposes of prostitution or assignation. Keeping such a house constitutes a misdemeanor.

Any male person "who lives wholly or in part on the earnings of prostitution, or who in any public place solicits for immoral purposes, is guilty of a misdemeanor." Selling, purchasing, and acting as agent in the sale or purchase of women for purposes of prostitution is covered by the same statute. When I worked for the Rockefeller Anti-Vice Committee, I found that several of my co-investigators were active panders, having two or more prostitutes on their string, and operating under the protection of their connection with the Anti-Vice Committee.

While simple pandering is a misdemeanor, prostitution of one's wife is a felony, punishable by imprisonment for not more than ten years.

The federal White Slave Act (or Mann White Slave Act) was passed purportedly to prevent interstate traffic in women; but it has been broadened by interpretation, as we have pointed out, to any interstate journey for purpose of sexual intercourse between a couple not legally married. There may have been no sexual intercourse; the offense is completed when the transportation takes place for that purpose.

The act further is designed to cover acts which might ultimately lead to sexual intercourse. The word "debauchery" in the act may be extended to reach vice or immorality other than that applicable to sexual action, says one decision.

Various states and cities have handled the question of prostitution in varying ways. For years, in New York City and elsewhere, the method chiefly favored was segregation, or the establishment of a Red Light district under police supervision. Then came the era of street walking, in which women were permitted by the police to solicit on the streets, provided they paid (or their cadets, panders or protectors paid) a certain graft or rake-off to the police department. Isolated women, without a protector, in such cases were arrested on a charge of solicitation, and fined; at times these fines took the place of the regular graft or rake-off to the police. Certain cities, including New York, then had a spasm of civic virtuousness, and cleaned the streets. Today the New York City prostitutes work chiefly in certain hotels, dance halls, massage parlors, restaurants and cafes, roadhouses, cabarets, and the like. In Chicago, more than New York, the girls live in the hotels.

The whole question of prostitution is linked

up with various economic and psychologic factors that must not be overlooked. The actual working of the system usually was that, whether there was a Red Light district or not, the persons arrested were the girls; while the male or female keeper of the house of prostitution, and especially the male visitors to the inmates, were not arrested. If the keepers were arrested, they were fined lightly. Of course, the men who were the patrons were not, as a rule, arrested; and, if they were, on rare occasions, they were dismissed with a nominal fine by some judge lenient of man's peccadilloes and strict as could be on woman's lapses from the double code of morality.

One interesting case came before me, while chief police magistrate of Birmingham. The case occurred upon the raid of a house of assignation, far from the Red Light district. Two young men appeared, who stated that they had been arrested with the two girls who appeared; the madame of the house was also arrested. The young men stated that they were traveling salesmen, and that this was their first offense. I dismissed the girls without a fine, feeling that they were the victims of economic pressure added to man's superior position under the double code of morality; fined the young men a nominal fifteen dollars

each; and fined the madame the maximum money fine.

Soon thereafter I was informed, by one of the arresting detectives, on the occasion of a few words stated by me to the detective force, that the words sounded all right; but that they understood that I was one of the gang, as previous judges had been. I asked what the man meant. He reminded me that a political boss had been arrested and brought before me, and had been dismissed with a fifteen dollar fine. I insisted that the facts were otherwise; but the detectives assured me that they stated the facts correctly, and told me further that the man, while somewhat intoxicated at the country club, boasted of how he had "fixed things" with the young judge.

There was only one thing to do. I ordered the chief of police to have the man brought into court. At first the man refused, in an ugly fashion; a few words altered his attitude. As the court session was ending, the man unobtrusively sidled into the rear of the courtroom. He confessed facts as the detectives had stated them, his excuse being that he thought I understood all along that he had been arrested, and that the two young men were men of straw, present to make things look regular.

Any fine imposed would have been at once set aside by the politician higher up. But even the lowest judge has a power of jailing for contempt of court, in my case limited to a twenty-four hour sentence; and this is not alterable by mayor, supreme court, or the deity himself. I sent the man to jail for contempt of court.

Of course, such an action could not radically improve the code of man's morality; but it could serve as an object lesson of how a modern judge regarded the double code of morality, and the efforts of the wealthy and powerful man to evade the responsibility for his acts, by tricking the court.

There are multitudinous statistics, laying the blame for prostitution upon mental deficiency in girls, and similar non-economic causes. These are essentially superficial. The real cause does not lie in this deficiency, which is shared to an equal extent, in the main, by men; if it did, we would have a class of male prostitutes for women, wealthy and otherwise, as numerous as the class of female prostitutes for men. The real cause lies in the widespread fact of the economic subservience of women, as a sex. Man still largely controls the purse strings; so he can buy his pleasure of the world, which includes the degradation of a certain number

of women. The improvement is already occurring, as women become more and more self-supporting. When women control the purse strings to any extent, they are equipped to purchase their will of the world; and, while this will may conceivably be liberality in sex, it will not be prostitution, especially not that prostitution consisting in the hiring of their bodies.

It is the lack of economic freedom which makes prostitution possible. The subject of so-called white slavery has been undoubtedly bloated in the sensational press; but there is a large nucleus of truth in the matter. It is still true that there is, in cities with a Red Light district, with permitted street-walking, or with available women as in New York or Chicago, a living to be made by men from the hiring of women's bodies; and where there is such an opportunity, economic subservience of women, and a surviving demand for purchasable women, there will continue to be prostitution and pandering. Certain gangs exist for this purpose, in the larger cities. The leaders of these gangs pick out girls, among shopgirls or home girls, whom they think will bring an income to the group; and they use any method to seduce the girls. A favorite way is to find out which

young man the girl likes, and to act through him.

Country girls coming to the city for the first time, or living in lonely fashion in the city, are an easy prey, especially with the viciously low wages in certain stores and industries. If these methods fail, drink, drugs, knock-out drops, or kidnaping and actual imprisonment, may suffice. At times, when no other method suffices, the girl goes through a marriage, real or mock, with some man; and, believing that she is a wife, it is not difficult to place her on the streets. Gouverneur Morris' powerful story, "The Claws of the Tiger," is based upon this theme.

The evils of prostitution exist. There is the ever-present danger of venereal infection: the girls getting this from casual visitors, and in turn giving it to uncontaminated young husbands or unmarried men who visit them. The unnatural life itself, with its over sexual stimulation and the usual concomitants of drinks and drugs, is hard on the health of the girls; and the statistics giving an average life of five years to a prostitute, from the time she enters the field, may not be entirely exaggerated.

American legislation has sought to end this by forbidding it, and by, in practice, fining and

harassing the girls, who are in the main the victims of the system. Where action has been taken against panders, alibis or skipped bail bonds have usually defeated the attempt of the law. Actions against the owners of houses of prostitution and the like have rarely amounted to much, in the way of prevention. The evil perhaps can not be directly touched by legislation, at least, not by criminal legislation. It will slowly cure itself, as woman's economic independence becomes more widespread. Among steps which will ameliorate the condition are motherhood pensions, independent of the legality of the union causing the offspring; and all laws lifting the economic status of women, whether by higher wage scales or not. All these forces will slowly unite to place woman in the position man occupies today. In that status, there may be liberality in sex; but there will not be prostitution, to any marked extent.

Bloch, by microscopic thinking, holds prostitution the central problem of the sexual question. If the matter were only one-tenth so simple as he concludes! "The abolition of prostitution and the suppression of venereal diseases would be almost tantamount to the solution of the entire sexual problem," he gen-

eralizes; and this is vicious thinking. With these two large results achieved the immense problem of the sexual relations of a man to women, and of a woman to men, would be, still largely untouched. Venereal disease will ultimately be greatly limited, or stamped out, by the medical profession and the legislation sponsored by it; prostitution will largely end with some temporary economic triumph of the feminist movement. The sexual problem will remain, for the slow solution of the common sense of the future.

Bloch says, "The fact that real, absolute poverty and lack of the necessaries of life drives many girls to a life of prostitution can, in view of recent statistical data, no longer be disputed." This should be amplified to include control of the purse strings by father and husband, which puts women at the control of men's desires. For the most impelling economic desires may not be for the necessaries of life, but may be for finery and amusements enjoyed by the wealthy, and envied by the girl of less financial backing. Where housing conditions require several adults to live closely packed together in one room or a small apartment, as where a married couple are required to have a male boarder, the situation is laid for the seduction of the woman by

the boarder, with prostitution as a possible goal. Where female relatives live with a married couple, proximity frequently causes the relatives to submit to the caresses of the man, with possible illegitimate births, and prostitution for the relative, who feels reduced to social pariahism by her natural misstep.

To recapitulate the status of prostitution in America, the offense is regarded by most judges as a slight one, whether it be the pander, the prostitute, or the madame who is being tried. Sporadic reforms cause raids on prostitution houses, in which it is expected that the inmates, rather than the panders, the madames, or the male patrons, should be fined. At times these raids amount to an unofficial license fee upon the prostitutes. Certain municipalities have provided for regulated Red Light districts; or for street-walking; or for a clean-up campaign: none of these has especially benefited the municipality.

Legislation should go after the madames and panders secondarily, and the male patrons (if this is not regarded as too utopian) and primarily, for purposes of prevention, in lifting the economic dependence of women to an economic independence. Any step in this direction is a step against prostitution.

CHAPTER VI

MISCELLANEOUS SEXUAL OFFENSES

There are certain miscellaneous sexual offenses, which may be taken up in a concluding section. The first of these is legally termed indecent exposure; it is a manifestation known as exhibitionism. By virtue of this, persons, especially men, partly undress, in order to satisfy their warped desire. There is no attack in such cases; the damage done is to the sensibilities of the persons to whom the exhibition is made. The parties performing it are generally slightly abnormal. The penalty perhaps should be supplanted by study for mental abnormality, and steps to remedy the condition of the emotions and the mentality.

The matter of pornographic literature and pornography in general is much more complicated. The essential thing to remember is, as Theodore Schroeder has established conclusively, that lewdness does not exist in the writings or pictures, but in the minds of the beholders. The law holds otherwise: at times holding that a product is pornographic if any isolated section of it is provocative or stimulating; at times holding that the total product must be adjudged by the standard of provocativeness.

When such a law is entrusted for observance to the average minds of policemen we have such anomalies as Dreiser's "Genius" censored, and the novels of Victoria Cross and Elinor Glyn permitted; we have the *American Mercury* censored for a mild article called "Hatrack," treating in non-fictional manner of one-town prostitutes; and such general retailers of smut as the "I Confess" and "True Stories" types of magazines, the "Hot Stuff" pocket exhibits of semi-nudity, the tabloid newspapers playing up the sexual on every occasion, and magazines like the *Cosmopolitan* permitted and encouraged.

There is more alleged "smut" in certain sections of the Old Testament than in all the later censored classics. There is no actual smut, except in the minds of the readers and beholders. Even books actually written to supply the demand for the lowest type of illiterate seekers for thrills, such as nude action pictures and such booklets as "A Night in a Moorish Harem," "Only a Boy," and the like, are not obscene in themselves: the obscenity is in the mind that comes to them. These may speed up the process of sexual sophistication of immature minds, let it be granted: so may the Old Testament, in the absence of these. If these minds

were adequately educated in sex, there would be no stimulus, or no harmful stimulus, in the eccentric would-be pornography. The most philosophic minds are against any censorship at all in literature or pictures; holding that the taste for the lowest will not permanently injure or remain, when better material covering the same matter is available.

Decent dramas, such as "Desire Under the Elms," "The Circle," and the like, have been censored; while plays for no other purpose other that the provocative, such as "Artists and Models," with their nude posturings, have been permitted. Both should be permitted; and slowly the intelligent among the citizenry would go to the better, rather than the worse.

Under sexual crimes, regulation of dance halls and similar places of amusement is sometimes grouped. These places, improperly conducted, undoubtedly ease the way toward sexual liberality; properly conducted, they are helpful social releases. The sex instinct, especially in youth, cannot be bottled up: dancing, and similar encounters of the sexes, should be encouraged, with proper supervision. The sale of liquor and drugs is not properly a sexual crime; although these may act as aphrodisiacs or aids in seduction. Common sense should govern such mat-

ters—such common-sense as the prohibition amendment to the constitution and the Volstead Act do not patently exhibit.

Birth control, or prevention of procreation, is strictly prohibited by law; and information concerning it is severely punished. Such information may be obtained by wealthy people from their family practitioners; and it is unfair class legislation to deprive the poor, who most need such information, of this means of evading further sinking into poverty and unhappiness. A country does not gain by infinite multiplication of its helot class, with diminution of its upper classes: yet there is the short-sighted policy upon which we and other countries are engaged.

Certain laws, against indecent exposure of the person, and against women masquerading in men's attire, and the reverse, base back to Old Testament authorities—the Biblical laws proceeding to forbid sowing two kinds of seeds in one field, and to forbid making garments of more than one kind of material, as wool and cotton. This latter provision is, of course, highly honored in the widespread breach; the laws against masquerading are still on the statute books. The recent tendency in women's attire permits more and more masculine effects, with men's hats, shirts, collars, ties, and the like; and, with the adoption by girls of knickerbockers, we have the whole way traveled. Men have not yet adopted styles permitting step-ins and skirts; but there is surely no proper criminal offense in such attire. Such laws will probably die of disuse rather than of repeal.

After all, while nudity is legally prohibited, such excessive modesty is of doubtful benefit. There are whole races of savages and peoples of higher cultures which practice complete or almost complete nudity, without damage to the local morality. It is only where there is a social convention, with or without legislation, against nudity, that exhibition becomes provocative. The girl of the '90's committed a highly stimulating act, in slyly lifting her skirts and showing her ankles; the girls today wear knee-length skirts, roll their stockings, wear underclothes almost invisible, and display without any public shock much that would have caused heart-failure thirty years ago. The tendency, especially in women's attire, is toward more and more display; and the result is not immorality, but a growth in morality. The human body is, or should be, a pleasant and esthetic sight: more display of it will tend to lessen the individual crime of misuse and degeneration of one's body, by excessive eating and drinking, and lack of intelligent exercise. Men's attire today is less sensible than women's; and there is a tendency toward common sense even in this.

On the whole, the American legal system, a patchwork of bits of the English Common Law sewed together in a crazy-quilt style, does not deal with great intelligence with sexual matters. Its generalities are too broad. For law, the crystallization of the current majority ethic upon any matter, always lags a generation or so behind the current practice. The practice

has become more intelligent, while the law has lagged. In serious sexual crimes, such as rape, there is a general unanimity in definition, although the punishments vary from the death sentence to a year's imprisonment: and, in such matters, more uniformity would be advantageous—a uniformity only to be attained by federal jurisdiction of crime, instead of state jurisdiction. This will ultimately come: and, futile as political endeavor has become, it is to be hoped that the more intelligent members of society will lend their weight to seeing to it that the federal legislation is not more puritanically absurd than is absolutely inevitable.

Let us glance at today's papers, to get a rapid bird's-eye view of the status of sexual crime in America. Here is the case of a man, aged more than fifty, who has married a girl of far less than twenty. He first adopted the girl as his daughter, to be a companion of his twelve-year-old adopted daughter; and then proceeded to marry the adopted daughter. Perhaps the facts are slightly misstated in the newspaper account: there were some intermediate adoptions, and perhaps merely the search for an adopted "older sister" of the younger girl resulted, not in adoption, but in marriage. The whole thing is an instance of senile love; neither healthy for society, the man, nor the girl. But the man had much money; the girl apparently is pleased by the marriage, whatever you choose to call it; her parents were pleased; and what is society to say, but to watch the wrecking of another girl's life on the commercial altar of marriage to an old man.

There is the story of a young woman, driven hysterical by the sexual attack of a gang of five men. In the court room, she has not recovered her sanity; her cries and songs make the court room shudder. She had stopped a truck, thinking it was driven by her cousin; finding it was not, she had accepted the driver's invitation to drive with him. Four other men joined him, and the girl was attacked while the truck halted on a viaduct. The girl managed to jump free after the viaduct was crossed, injuring her head; and the result of the attack and the blow on the head was some mental unbalance. The outcome of this case is for the future.

There is a dreadful story from Scranton, Pa., of a fifteen-year-old girl, under arrest, who was treated with "tear gas" by a jail attendant, to cure her refractoriness. The girl was pregnant, and has died from the attack. There is an apparent element of sadism in the attack; and the whole incident is brutal in the extreme.

There is a strange story from New Jersey of an all-American football star from LaFayette college, who committed bigamy, went crazy from the threatened arrest, threatened to shoot his young second bride and her parents, and finally committed suicide. Two sensational divorce cases are running concurrently. All of these fit more or less into the offenses previously treated: and remind us that such crimes fluctuate seasonally, but that the number per year and per month may be forecast by statisticians with great accuracy.